might, nevertheless, recover, the principal not having been prejudiced by the delay, *Schramm* v. *Wolff*, (Texas, 1910), 126 S. W. 1185. But assuming that under the bilateral theory notice of performance within the time specified is essential, it is well established that when performance is prevented by the acts of the principal, the cause of action is not defeated. *Lundell* v. *Schultz*, 186 Ill. App. 245, WILLISTON ON CONTRACTS, § 677.

CONTRACTS—ILLEGALITY OF "TYING CLAUSES" IN A LEASE OF MACHINERY UNDER THE CLAYTON ACT.—Defendant, through its patents, controlled a very large portion of the business of supplying shoe machinery. Shoe machinery was leased to shoe manufacturers upon conditions, some of which were (1) that the machinery would be used only on shoes upon which certain other operations were performed on other machines of defendant; (2) that if lessee failed to use exclusively certain kinds of machines made by defendant, lessor could cancel all leases; (3) that lessee should purchase all supplies from defendant; (4) that lessee should buy all additional machinery of a certain class from defendant; (5) that royalty should be paid on all shoes operated upon by machines of competitors. In a suit by the United States to restrain the defendant from making leases containing such restrictions, *held*, such restrictions were invalid under § 3 of the Clayton Act which makes it unlawful for persons engaged in interstate commerce to lease machinery, whether patented or unpatented, upon condition that the lessee shall not use machinery of the competitors of the lessor, where the effect of such lease may be substantially to lessen competition or to tend to create a monopoly. *United Shoe Machinery Corporation* v. *United States*, U. S. Sup. Ct. Adv. Op., No. 119, Oct. Term, 1921.

In the absence of the statute, leases of machinery containing "tying clauses" similar to those enumerated above have been upheld. *United Shoe Machinery Co.* v. *Brunet* [1909], A. C. 330; *United States* v. *United Shoe Machinery Co.*, 247 U. S. 32. But the court in the principal case decides that such restrictions are prohibited by the Clayton Act for, though "the clauses enjoined do not contain specific agreements not to use the machinery of a competitor of the lessor, the practical effect of these drastic provisions is to prevent such use." The defendants' chief defense was that the Act is an unconstitutional limitation upon the rights secured to a patentee and is therefore a taking away of property without due process. But the Supreme Court has formerly held that a patent confers upon the patentee only the exclusive right to make, use, and sell the invention and confers no privilege to make contracts in themselves illegal. *Motion Picture Patents Co.* v. *Universal Film Co.*, 243 U. S. 502; *Standard Sanitary Mfg. Co.* v. *U. S.*, 226 U. S. 20.

CRIMES—MENS REA.—Defendant was indicted for having sold a derivative of opium in violation of the federal Narcotic Act of 1914, 38 STAT. 785. He demurred on the ground that the indictment failed to charge that he knew the derivative to be such. *Held*, the statute did not make such knowledge